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Right of peoples to self-determination

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Report of the Secretary-General*

Summary

In its resolution 58/161 of 22 December 2003, the General Assembly, inter alia, requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the Assembly at its fifty-ninth session under the item entitled "Right of peoples to self-determination".

* The present report was submitted with a delay in order to finalize internal consultations on the material to be included in it.

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I. Introduction

1. The principle of self-determination has been enshrined in article 1, paragraph 2, of the Charter of the United Nations.

2. Under the terms of resolution 2625 (XXV), "Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle ...".

3. Article 1 common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights reaffirms the right of all peoples to self-determination, and lays upon States the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the Charter of the United Nations.

4. The International Court of Justice considered that "the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an erga omnes character".[1]

5. The present report contains an account of a consideration of the issue "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" at the sixtieth session of the Commission on Human Rights and the advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory (see A/ES-10/273).

II. Sixtieth session of the Commission on Human Rights

6. During its sixtieth session, under agenda item 5, the Commission on Human Rights discussed "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation". Three resolutions were adopted by the Commission under item 5: resolution 2004/3 on the "Situation in occupied Palestine"; resolution 2004/4 on the "Question of Western Sahara"; and resolution 2004/5 on "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination".

7. In paragraph 1 of its resolution 2004/3, the Commission on Human Rights reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to establish their sovereign and independent Palestinian State and looked forward to the early fulfilment of that right. In paragraph 2, it requested the Secretary-General to transmit the resolution to the Government of Israel and all other Governments, to disseminate it on the widest possible scale and to make available to the Commission, prior to its sixty-first session, all information pertaining to the implementation of the resolution by the Government of Israel. In paragraph 3, the Commission decided to include in the agenda of its sixty-first session the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or

foreign occupation" and to consider the situation in occupied Palestine under that agenda item, as a matter of high priority.

8. In its resolution 2004/4, the Commission on Human Rights recalled Security Council resolutions 1359 (2001) and 1429 (2002), as well as resolution 1495 (2003), in which the Council expressed its support for the peace plan for self-determination of the people of Western Sahara as an optimum political solution on the basis of agreement between the two parties. The Commission noted with satisfaction the entry into force of the ceasefire in accordance with the proposal of the Secretary-General and stressed the importance that it attached to the maintenance of the ceasefire as an integral part of the settlement plan. The Commission recalled that the General Assembly had examined the report of the Secretary-General (A/58/171) and, in paragraph 3, it strongly supported the efforts of the Secretary-General and his Personal Envoy in order to achieve a mutually acceptable political solution to the dispute over Western Sahara. In paragraph 5, the Commission called upon all the parties and the States of the region to cooperate fully with the Secretary-General and his Personal Envoy; in paragraph 7, it called upon the parties to cooperate with the International Committee of the Red Cross in its efforts to solve the problem of the fate of people unaccounted for, and called upon the parties to abide by their obligation under international humanitarian law to release without further delay all those held since the start of the conflict. In paragraph 8, the Commission noted that the Assembly had requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to consider the situation in Western Sahara and to report thereon to the Assembly at its fifty-ninth session.

9. In paragraph 3 of its resolution 2004/5, the Commission on Human Rights reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. In paragraph 4, it recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers encourage the demand for mercenaries on the global market. In paragraph 5, the Commission urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State, or dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right to self-determination of peoples. In paragraph 12, the Commission condemned recent mercenary activities in Africa and the threat they pose to the integrity and respect of the constitutional order of these countries and the exercise of the right to self-determination of their peoples. In paragraph 14, it called upon the international community to cooperate with and assist the judicial prosecution of those accused of mercenary activities, in accordance with their obligations under international law, in transparent, open and fair trials. In paragraph 15, the Commission requested the new Special Rapporteur on mercenaries to circulate to and consult with States on the new proposal for a legal definition of a mercenary and to report his/her findings back; in paragraph 16 and 17, it requested the Office of the United Nations High Commissioner for Human Rights to convene a third meeting of experts on

traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of peoples to self-determination; and to publicize the adverse effects of mercenary activities on the right of peoples to self-determination and, when requested and where necessary, to provide advisory services to States that are affected by these activities. In paragraph 21, the Commission requested the new Special Rapporteur on mercenaries to consult States and intergovernmental and non-governmental organizations in the implementation of the resolution and to report, with specific recommendations, his/her findings on the use of mercenaries to undermine the right of peoples to self-determination to the Commission at its sixty-first session.

III. Advisory opinion of the International Court of Justice on the legal consequences of a wall in the occupied Palestinian territory

10. On 8 December 2003, in its resolution ES-10/14, the General Assembly decided to request the International Court of Justice urgently to render an advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territory. On 9 July 2004, the International Court of Justice delivered its advisory opinion. On 13 July 2004, the Secretary-General received this advisory opinion of the Court and transmitted it to the General Assembly, as well as the separate opinions and the declaration appended thereto (see A/ES-10/273).

11. The International Court of Justice found that the construction of the wall by Israel "in the occupied Palestinian territory, including in and around East Jerusalem, and its associated régime, are contrary to international law" (ibid., para. 163.3.A). The Court considered that the construction of the wall and its associated regime "create a 'fait accompli' on the ground that could well become permanent", in which case the construction of the wall would be "tantamount to de facto annexation" (ibid.). It further noted that "the route chosen for the wall gives expression in loco to the illegal measures taken by Israel with regard to Jerusalem and the settlements" (ibid., para. 122), and deplored by the Security Council,[2] and that it entails "a risk of further alterations to the demographic composition of the occupied Palestinian territory" (A/ES-10, 273, para. 122). The International Court of Justice found that the construction of the wall, "along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right" (ibid.).

Notes

[1] *East Timor, I.C.J. Reports 1995*, p. 102, para. 29.

[2] See Security Council resolutions 298 (1971), 446 (1979), 452 (1979), 465 (1980), 478 (1980).